

**Probate Conservatorship Task Force
Business Meeting**

**Burbank, California
April 26, 2006**

Minutes

Task Force Members Present: Hon. Roger W. Boren (*Chair*), Hon. Aviva K. Bobb, Ms. Judith Chinello, Hon. Don Edward Green, Hon. Laurence Donald Kay (Ret.), Ms. Gina L. Klee, Hon. William H. Kronberger, Dr. Margaret Little, Ms. Margaret Lodise, Hon. Sandra Lynn Margulies, Ms. Sandy Sanfilippo, Mr. Alan Slater, Ms. Pat Sweeten, Mr. Alfredo Terrazas, and Hon. James Michael Welch

Task Force Members Not Present: Hon. S. William Abel, Ms. Michelle Williams Court, Hon. Donna J. Hitchens, Hon. Frederick Paul Horn, Hon. Steven E. Jahr, Ms. Patricia L. McGinnis, Hon. Barbara J. Miller, Mr. Richard L. Narver, Ms. Gloria Ochoa, and Ms. Jacquie Paige

Task Force Staff: Chris Patton, (*Lead*), Rod Cathcart, Denise Friday, Douglas C. Miller, Dan Pone, Evyn Shomer, Rowena Rogelio, and Susan Reeves

Item 1 Welcome and Introduction of Members

Justice Roger Boren, Chair, called the meeting to order, welcomed task force members, and indicated that media and public may be attending the meeting. [Note: Meeting was attended by Allan Parachini, Public Information Officer, Superior Court of Los Angeles County, and Jeffrey P. Lustman, a private attorney in the Los Angeles area.] Members and staff made introductions. Justice Boren reviewed the agenda for the day.

Item 2 Appointment of New Members to Working Groups

Justice Roger Boren appointed new task force members to working groups:

- Education and Training: Ms. Judith Chinello
- Best Practices: Ms. Margaret Lodise

Item 3 Public Comments

The task force heard from Jeffrey P. Lustman, a private attorney representing a conservatee. Mr. Lustman previously testified before the task force at the March 17 public hearing. He is concerned about the probate conservatorship system, and believes that there is not enough attention being paid to relationships between public guardians, public defenders' offices, and the courts. Mr. Lustman also believes that there is abuse of authority by judges, the courts of appeal,

and public guardians. There needs to be strong penalties for abuse of power, and these penalties need to be enforced.

Item 4 Review of Public Correspondence Log

The log of public correspondence received to date was reviewed by the task force. All letters and e-mails will be read, recorded, and responded to in general terms. All responses will stress that the charge of this task force does not permit the task force to investigate, provide a judicial remedy, or take any other action in individual cases, but that issues raised will be considered as part of the evaluation of possible improvements to the overall system of probate conservatorship administration.

Item 5 Review of Summary of Written Testimony from Public Hearings

Major themes of the testimony were discussed:

- Temporary Conservatorships
- Permanent Conservatorships
- Improving Collaboration with Key Justice System Partners
- Model Programs and Best Practices
- Miscellaneous

Item 6 Task Force Charge

Please refer to the Task Force Charge document on Page 5.

The Chair raised the question whether the task force had adequately met the first point of its charge, that of seeking information from a broad range of stakeholders? The task force discussed whether more public hearings were needed. There was consensus that reaching out directly to conservatees, private non-professional conservators, and family members would provide a more complete picture of the system. The task force agreed to investigate the possibility of developing a survey through the Administrative Office of the Court's Office of Court Research, which would reach the key stakeholder groups that may be otherwise missed. Careful set up of the survey will be needed so the results are not skewed.

The task force also discussed whether the charge needed to be expanded to include increasing public confidence in the overall system? It was suggested that the public's lack of confidence is perpetuated by the "secrecy" of the system which was designed to protect the confidentiality of conservatees' documents such as investigators reports, medical and financial reports. One task force member stated that currently we have the worst of both worlds, too much is sealed and too much is public. The task force will need to review confidentiality issues, but decided that this topic falls within the parameters of the fifth point of the charge: "Make other recommendations to the Judicial Council that further the purposes of the task force."

The task force considered the need for an avenue other than the court system where the public can voice concerns about the probate conservatorship system, such as an ombudsman program.

The task force members agreed that the remaining points of the charge appear to be adequately covered by the three assigned working groups.

Item 7 Reports of Working Groups

Reports were made by the leads from each of the three working groups:

- a. Rules and Laws – reviews pending legislation, as well as current statutes, case law, rules of courts, forms and procedures, to make recommendations regarding possible reforms in these areas.

Alan Slater reported that the working group is compiling a matrix of the following information:

- Appointment of temporary and general conservators, including appointments of counsel for proposed conservatees
- Role of court investigators and reports and accountings of appointed conservators
- Private professional conservators, including existing laws and new legislation
- Powers of conservators, restrictions or incapacities imposed on conservatees

Dan Pone provided a status report on the four bills currently pending in the Legislature that would impact probate conservatorship. *Please see summary document Page 6.*

- AB 1363 (Jones) – Omnibus Conservatorship and Guardianship Reform Act of 2006
- SB 1116 (Scott) – Conservatorships
- SB 1550 (Figueroa) – Professional Fiduciaries Act
- SB 1716 (Bowen) – Conservatorships

The legislation discussion centered on funding and resources, including need for more judicial officers. The current baseline funding for the system was set by the counties in the 1990s. This is barely sufficient to cover core functions at present. The legislature needs to consider a shift in financial burden from conservatees' estates to public funding—obviously additional state funding will be needed.

- b. Education and Training – reviews existing education and training programs for judges and other probate court personnel such as examiners and investigators, and makes recommendations regarding possible changes to enhance training.

Working group will explore possibility of working with the California Center for Judicial Education and Research (CJER) to offer input for the curriculum of their annual Probate Institute (not yet calendared for 2006).

- c. Model Programs and Best Practices – reviews innovative programs in California and around the country, and makes recommendations regarding possible models that should be adopted in California to improve the administration and oversight of conservatorship cases.

The working group will be investigating a number of interesting programs that potentially could be implemented on a state-wide basis, such as the web-based accounting system currently in place in Ramsey County, Minnesota. The Canadian systems also may be looked at for application here.

Another approach will be to develop a dialog with California judges through focus groups, and to survey the courts in general relative to staffing and other areas of judicial needs. The working group hopes to have an interim report covering their review to the task force by September 30, 2006.

Item 8 Working Group Meetings

Each of the working groups met separately to develop their work plans and begin deliberations in their respective areas.

Item 9 Future Meetings

Task Force discussed possible dates for monthly meetings beginning in May 2006. These will be scheduled primarily on Fridays, the best days of the week for most members.

Item 10 Other Business

With no further business, the meeting was adjourned at 2:30 p.m.

Approved by the Probate Conservatorship Task Force on May 24, 2006

Charge of the Judicial Council Probate Conservatorship Task Force

1. Seek input from a broad range of interested and affected stakeholders about how to improve the practices, procedures, and administration of probate conservatorship cases, including:
 - a. Conservatees;
 - b. Private professional conservators, guardians, and fiduciaries;
 - c. Family members, including those appointed as conservators;
 - d. Attorneys who represent conservators and conservatees;
 - e. Advocacy groups; and
 - f. Judicial officers and court staff.
2. Perform a comprehensive review of:
 - a. The law governing conservatorships established under the Probate Code, including the current statutes, case law, rules of court, ethical constraints, standards of judicial administration, and related forms and procedures, as well as the best methods now used in courts' management of conservatorship cases;
 - b. The assignment of judicial officers to handle conservatorship cases, including any education, training, and other prerequisites for such assignments;
 - c. The laws, practices, and procedures of other jurisdictions, including any national standards that may exist, that pertain to conservatorships, guardianships, and/or other protective arrangements involving court oversight of dependent adults;
 - d. The educational and training programs on probate conservatorships that are currently being provided for judicial officers and other court personnel through the Administrative Office of the Courts' Education Division or other sources; and
 - e. The staffing and other court resources currently being utilized for probate conservatorships, including investigator, examiner, and attorney positions.
3. Make recommendations to the Judicial Council for reforms and improvements to the overall system of conservatorship administration—including but not limited to changes to legislation, rules of court, funding, education, and training—in order to enhance services provided for, and more effectively prevent and deter abuse of, conservatees.
4. Create model guidelines for probate courts' practices and procedures in the handling of conservatorship cases.
5. Make other recommendations to the Judicial Council that further the purposes of the task force

JUDICIAL COUNCIL OF CALIFORNIA
Status of 2006 Legislation Considered by the Policy Coordination and Liaison Committee

Bill No.	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status As of April 28, 2006
AB 1363	<u>AB 1363 (Jones) – Omnibus Conservatorship and Guardianship Reform Act of 2006</u> As amended January 24, 2006 Among other things, the bill would require: the Department of Consumer Affairs to establish and administer a licensing program for professional conservators and guardians; annual, rather than biennial, reviews of conservatorships at noticed hearings; conservators and guardians to present annual, rather than biennial, accountings to the courts; the Judicial Council to adopt rules of court relating to conservatorships and guardianships and to develop and make available, free of charge, educational programs for non-licensed conservators and guardians; courts to provide free assistance to non-licensed conservators and guardians; and the Judicial Council to establish qualifications and educational classes for probate court attorneys and investigators, educational classes for probate judges and public guardians, and certain conservatorship accountability measures.	Support if amended and funded	Bet Tzedek Legal Services and California Alliance for Retired Americans	Senate Business, Professions and Economic Development
SB 1116	<u>SB 1116 (Scott) – Conservatorships</u> As amended April 5, 2006 Seeks to ensure that conservatees are placed in the least restrictive appropriate setting and enhance the courts' oversight of sales involving a conservatee's personal residence.	Support if amended	Author	Senate Appropriations Committee
SB 1550	<u>SB 1550 (Figueroa) – Professional Fiduciaries Act</u> As introduced Enacts the Professional Fiduciaries Act. Among other things, the bill would create the Board of Professional Fiduciaries in the Department of Consumer Affairs, and would require the board to license and regulate professional fiduciaries. The bill would also prohibit a court from appointing a person as a professional fiduciary unless he or she is certified as a professional fiduciary.	Support if amended	Professional Fiduciary Association of California	Senate Appropriations Committee
SB 1716	<u>SB 1716 (Bowen) – Conservatorships</u> As introduced Allows the courts, on its own motion or upon request, to order a review of the conservatorship at any other time. Requires the court investigator's evaluation to include the appropriateness of the conservatee's placement, the conservatee's quality of care, and the conservatee's financial condition. Prohibits, except as specified, ex parte communications between any party or attorney for the party and the court concerning a subject raised in pleadings filed pursuant to the Probate Code, and in proceedings to establish a conservatorship for persons who are gravely disabled as a result of a mental disorder or chronic alcoholism and would require the Judicial Council to adopt a rule of court to implement this provision by July 1, 2007.	Support, if funded	Author	Senate Appropriations Committee